

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rolando Vasquez	Team: Squad #13	CCRB Case #: 201904882	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 01/10/2019 10:00 AM	Location of Incident: [REDACTED]	Precinct: 71	18 Mo. SOL 7/10/2020	EO SOL 2/24/2021	
Date/Time CV Reported Thu, 06/06/2019 8:07 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 06/06/2019 8:07 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. LT William Diab	00000	940125	WARRSEC

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 David Hudgens	7823	952864	WARRSEC
2. DT3 Piero Lasaponara	01161	947157	WARRSEC
3. DT3 James Quirk	6955	951100	WARRSEC

Officer(s)	Allegation	Investigator Recommendation
A.LT William Diab	Discourtesy: Lieutenant William Diab spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]
B.LT William Diab	Abuse: Lieutenant William Diab threatened § 87(2)(b) [REDACTED] with the use of force.	[REDACTED]
C.LT William Diab	Force: Lieutenant William Diab used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
D.LT William Diab	Force: Lieutenant William Diab used a chokehold against § 87(2)(b) [REDACTED]	[REDACTED]
E.LT William Diab	Force: Lieutenant William Diab used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
F.LT William Diab	Discourtesy: Lieutenant William Diab spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]

### Case Summary

On June 6, 2019, § 87(2)(b) called the CCRB and filed this complaint on behalf of himself and his wife, § 87(2)(b).

On January 10, 2019, at about 10:00 a.m., § 87(2)(b) was outside his apartment building at § 87(2)(b) in Brooklyn. Lt. William Diab of the Warrant Squad allegedly made various discourteous and threatening remarks toward § 87(2)(b) (**Allegations A-B: Discourtesy/Abuse of Authority, § 87(2)(g)**). Lt. Diab pushed § 87(2)(b) (**Allegation C: Force: § 87(2)(g)**), used a chokehold against § 87(2)(b) (**Allegation D: Force: § 87(2)(g)**), and performed a forcible takedown of § 87(2)(b) (**Allegation E: Force, § 87(2)(g)**). Lt. Diab allegedly spoke discourteously toward § 87(2)(b) (**Allegation F: Discourtesy, § 87(2)(g)**). § 87(2)(b) was arrested and charged with obstructing governmental administration, making terroristic threats, and assaulting a police officer. The Office of Court Administration (OCA) has no record of to the disposition of the arrest (BR01).

Surveillance video of the incident was obtained, which is attached to IA#51 (BR02) and is summarized in IA#86 (BR03). There is no other video evidence in this case.

### Findings and Recommendations

**Allegation (A) Discourtesy: Lieutenant William Diab spoke discourteously toward § 87(2)(b).**

**Allegation (B) Abuse of Authority: Lieutenant William Diab threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) testified that he was standing outside of his apartment building smoking a cigarette (BR04). Three men, identified by the investigation as Lt. Diab, Det. James Quirk, and Det. Piero Lasaponara of the Warrant Squad, walked toward the building. Lt. Diab told § 87(2)(b) “You’re ugly. You got big bug eyes. What the fuck are you watching me for? I’ll smack the shit out of you. I dare you to come to me. I’ll fuck you up. What are you doing here?” § 87(2)(b) told the officers that he lived in the building and had just gotten back from dropping off his son at school. Lt. Diab, Det. Quirk, and Det. Lasaponara walked past § 87(2)(b) toward the entrance to the building. § 87(2)(b) finished smoking his cigarette and walked toward the entrance to the building. Lt. Diab said, “What the fuck are you doing following an officer?” § 87(2)(b) told Lt. Diab that he was going home and that he was on camera, in reference to the building’s surveillance camera. Lt. Diab said, “I don’t give a fuck. You’ll never see me again. I’ll kill you.”

The surveillance video captures the entrance to § 87(2)(b) (BR02). The video shows Lt. Diab (wearing a backwards facing Yankees cap) and Det. Lasaponara approach the entrance to the building. § 87(2)(b) and Det. Quirk appear in the frame and approach the entrance about 10 seconds later. At the 00:23 second mark on the media player timestamp, visible at the bottom of the screen, Lt. Diab turns around so that his back is to the camera, walks down the stairs, and seemingly momentarily converses with § 87(2)(b) based on their mouths moving, through the video does not have audio. Lt. Diab then turns back toward the entrance.

Lt. Diab and Det. Quirk provided the following consistent testimony (BR05-06). The officers were at § 87(2)(b) to attempt the execution of an arrest warrant for a violent robbery suspect. The officers’ presence at the building was completely unrelated to § 87(2)(b). As the officers attempted to enter the building, § 87(2)(b) was irate and yelled profanities at them.

Lt. Diab testified that as they approached the building, § 87(2)(b) was pacing in front of the building with his hands in his pockets while staring at the officers. § 87(2)(b) was mumbling something under his breath. Lt. Diab said, “Hey, what’s up?” § 87(2)(b) cursed and made violent

statements toward the officers, but Lt. Diab did not remember what these statements were during his CCRB interview. Lt. Diab decided to continue walking toward the building and tried to get inside. § 87(2)(b) approached the officers hurriedly with his hands in his pockets which made Lt. Diab fearful that § 87(2)(b) intended to hurt him. Lt. Diab descended the stairs and told § 87(2)(b) “We’re not here for you. Leave. Get out of here.” Lt. Diab denied that he used any profanity toward § 87(2)(b) made any of the alleged remarks about § 87(2)(b)’s appearance, and denied that he threatened § 87(2)(b) with the use of force.

Det. Quirk testified that § 87(2)(b) was yelling and cursing at Lt. Diab, including threatening to kill the officers and telling the officers that they were going to die. Det. Quirk denied that Lt. Diab said anything to § 87(2)(b) as they approached the building. When shown the video footage which shows Lt. Diab and § 87(2)(b) speaking outside the entrance to the building during his CCRB interview, Det. Quirk did not remember what was said between them. Det. Quirk denied that Lt. Diab used any profanity toward § 87(2)(b) and denied that Lt. Diab threatened § 87(2)(b) with the use of force.

Det. David Hudgens of the Warrant Squad was also working with the officers involved in this incident, but testified that he remained in the prisoner van while the other officers went inside. Det. Hudgens denied witnessing what happened between the other officers and § 87(2)(b) (BR07).

The surveillance video captured the aspect of the interaction at the entrance of the building and shows that some conversation occurred between Lt. Diab and § 87(2)(b) § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation (C) Force: Lieutenant William Diab used physical force against § 87(2)(b)**

**Allegation (D) Force: Lieutenant William Diab used a chokehold against § 87(2)(b)**

§ 87(2)(b) testified that he walked toward the entrance of the building and told Lt. Diab he lived in the building and needed to go to work. Lt. Diab approached § 87(2)(b) put an open palm against the front of § 87(2)(b)’s neck and pushed him backward. This action did not restrict § 87(2)(b)’s breathing. § 87(2)(b) denied that he made any threats toward any of the officers.

The surveillance video shows Lt. Diab and Det. Lasaponara approach the building. Det. Quirk and § 87(2)(b) appear moving toward the building at the 00:20 minute mark of the video player timestamp (visible at the bottom of the screen). At 00:28, Lt. Diab walks into § 87(2)(b) so his chest makes contact with § 87(2)(b)’s right arm. This causes § 87(2)(b) to bump into the building. At 00:32, Lt. Diab pushes § 87(2)(b) with his hand backward. It cannot be clearly discerned in the video whether the physical contact Lt. Diab makes is with § 87(2)(b)’s neck or his upper chest. Lt. Diab starts walking toward the entrance to the building again. § 87(2)(b) appears to continue speaking toward Lt. Diab, points toward the building, and walks towards the stairs behind Lt. Diab.

Lt. Diab testified that § 87(2)(b)’s verbal hostility, violent statements, and unprompted focus on the officers made him concerned for his safety. Further, as Lt. Diab attempted to enter the building, § 87(2)(b) came toward him quickly with his hands in his pockets, which increased Lt. Diab’s fear of § 87(2)(b). Lt. Diab did not see anything on § 87(2)(b)’s person, such as any bulges, that made him believe § 87(2)(b) was armed. However, given § 87(2)(b)’s angry demeanor and violent statements, § 87(2)(b)’s hands in his pockets made Lt. Diab concerned that he may be concealing a weapon. Lt. Diab told § 87(2)(b) to leave, but § 87(2)(b) refused. § 87(2)(b) did not tell the officers that he lived in the building. Lt. Diab told § 87(2)(b) “We’re not here for you. Leave. Get

out of here,” and pushed § 87(2)(b) in his chest to emphasize to him to leave. When shown the surveillance video which shows him bumping into § 87(2)(b) with his body during his CCRB interview, Lt. Diab said he did this to compel § 87(2)(b) to leave. Lt. Diab did not use any other force against § 87(2)(b) and denied making contact with § 87(2)(b)’s neck.

Det. Quirk corroborated Lt. Diab’s account that § 87(2)(b) made verbal threats toward the officers as he quickly approached Lt. Diab. These threats included verbal statements that § 87(2)(b) would kill the officers. Det. Quirk did not remember what conversation happened between Lt. Diab and § 87(2)(b) outside the entrance to the building and could not elaborate more on what was happening during this aspect of the incident after being shown the surveillance video during his CCRB interview. Det. Quirk denied that Lt. Diab used a chokehold against § 87(2)(b).

Officers may use force when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life. When appropriate and consistent with personal safety, officers will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. Officers shall not use chokeholds. NYPD Patrol Guide, Procedure 221-01 (BR08).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

**Allegation (E) Force: Lieutenant William Diab used physical force against § 87(2)(b)**

§ 87(2)(b) testified that after Lt. Diab pushed him, § 87(2)(b) put his hands above his head and repeated that he lived in the building. Lt. Diab approached § 87(2)(b) and pushed § 87(2)(b) against a nearby ramp. § 87(2)(b) screamed for help and did not make any other movements. Lt. Diab pushed § 87(2)(b) to the ground and § 87(2)(b) was handcuffed. § 87(2)(b) denied that he made any threats toward any of the officers.

Starting at the 00:40 minute mark in the surveillance video, Lt. Diab walks up the stairs toward the building entrance and § 87(2)(b) follows a few steps behind him. At 00:42, Lt. Diab grabs § 87(2)(b) underneath his armpits and pushes him against the ramp. At 00:47, § 87(2)(b) pushes his arms in front of him and grabs a hold of the metal railing to the ramp. Lt. Diab bends down and grabs § 87(2)(b)’s legs. At 00:51, § 87(2)(b) falls to the ground. Det. Quirk and Det. Lasaponara attempt to grab § 87(2)(b)’s hands. § 87(2)(b) is handcuffed on the ground.

Lt. Diab testified that he attempted to enter the building again hoping § 87(2)(b) would leave.

However, § 87(2)(b) closely followed Lt Diab which made Lt. Diab fearful that § 87(2)(b) would attempt to harm him. Lt. Diab determined that § 87(2)(b) would be arrested for obstructing governmental administration for interfering with the officers' ability to enter the building, and for making violent statements toward them. § 87(2)(b) resisted arrest by flailing his arms away from the officers and grabbing hold of the ramp railing. § 87(2)(b) was brought to the ground in order to get him handcuffed because the officers were unable to do so while he was standing. (Lt. Diab said § 87(2)(b) was ultimately also charged with assaulting a police officer because he subsequently allegedly kicked Lt. Diab's hand while being placed inside the prisoner van.)

Det Quirk corroborated Lt. Diab's account that § 87(2)(b) physically resisted arrest by flailing his arms away from the officers who were attempting to handcuff him, and kicking his legs, which prompted a controlled takedown of § 87(2)(b) in order to place him in custody.

Officers may use force when it is reasonable to place a person in custody, including when a subject is actively resisting arrest. Active resistance includes physically evasive movements to defeat a member of the services' attempt at control, including bracing, tensing, pushing, or to avoid or prevent being taken into custody. NYPD Patrol Guide, Procedure 221-01 (BR08).

§ 87(2)(g)

**Allegation (F) Discourtesy: Lieutenant William Diab spoke discourteously toward § 87(2)(b)**

§ 87(2)(b) testified that § 87(2)(b) came outside after he had already been handcuffed, while the officers were placing him in the transport vehicle. § 87(2)(b) asked what was happening and Lt. Diab told her to "Shut the fuck up."

§ 87(2)(b) was unavailable to the investigation (See IAs for contact attempts).

Lt. Diab and Det. Quirk both said they noticed § 87(2)(b) exit the building. However, Lt. Diab did not recall interacting with her. Det. Quirk said he told her that § 87(2)(b) was being taken to the 71<sup>st</sup> Precinct stationhouse. Both officers denied Lt. Diab spoke discourteously toward § 87(2)(b).

Det. Hudgens testified that he exited the transport van while the other officers were trying to get § 87(2)(b) into the van because § 87(2)(b) appeared and was yelling at the officers. Det. Hudgens ordered § 87(2)(b) to back up and she complied. Det. Hudgens did not remember if § 87(2)(b) interacted with any other officer, but he denied that any officer used any profanity toward her.

§ 87(2)(g)

**Civilian and Officer CCRB Histories**

- This is the second complaint to which § 87(2)(b) has been a party.
  - § 87(2)(b)
- This is the first complaint to which § 87(2)(b) has been a party (BR10).

- Lt. Diab has been a member of the service for 14 years and has been a subject of 63 allegations involving 20 CCRB complaints, seven of which were substantiated.
  - In CCRB 200800389, the Board substantiated a physical force (pulling) allegation and discourteous action allegation against Lt. Diab, and recommended Charges. The NYPD imposed the loss of 35 vacation days.
  - In CCRB 201507839, the Board substantiated a stop allegation against Lt. Diab, and recommended Formalized Training which the NYPD imposed.
  - In CCRB 201803645, the Board substantiated a stop and refusal to provide name/shield number allegation against Lt. Diab and recommended Command Discipline A. The NYPD imposed no penalty.
  - In CCRB 201805446, the Board substantiated a physical force allegation (forcible takedown, punch) against Lt Diab and recommended Command Discipline B which the NYPD imposed.
  - In CCRB 201810023, the Board substantiated a refusal to provide a Right to Know Act business card allegation against Lt. Diab and recommended Command Level Instructions. The NYPD has not yet disposed of this allegation.

#### **Mediation, Civil and Criminal Histories**

- This complaint was not suitable for mediation.
- A Notice of Claim request was submitted to the NYC Office of the Comptroller and the results will be added to the case upon receipt.
- § 87(2)(b) [REDACTED]
- According to OCA, § 87(2)(b) [REDACTED] does not have a history of any convictions in NYC (BR11).

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Squad No.: 13

Investigator: _____	<u>SI Rolando Vasquez</u>	<u>04/29/20</u>
Signature	Print Title & Name	Date

Squad Leader: _____	<u>IM Laura Kastner</u>	<u>04/29/20</u>
Signature	Print Title & Name	Date